

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 17816
[Redacted],)	
)	DECISION
Petitioner.)	
_____)	

On October 8, 2003, the staff of the Tax Discovery Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing income tax, penalty, and interest for the taxable years 1999 through 2001 in the total amount of \$68,219.

On December 8, 2003, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing but did provide additional information for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The Tax Discovery Bureau (Bureau) received information that showed the taxpayer received nonemployee compensation in the taxable years 1999 and 2000. The Bureau researched the Tax Commission's records and found that the last Idaho individual income tax return recorded for the taxpayer was for the tax year 1998. The Bureau sent the taxpayer a letter asking about his requirement to file Idaho income tax returns for the tax years 1999 through 2001. The taxpayer did not respond. The Bureau obtained additional information and determined the taxpayer was required to file Idaho income tax returns. The Bureau prepared returns for the taxpayer and sent him a Notice of Deficiency Determination.

The taxpayer protested the Bureau's determination. In his letter of protest, the taxpayer requested a "More Definite Statement On any liability and Obligation for Idaho Income Tax." He stated this was his good faith attempt to get an understanding of his lawful obligations and

requirements under the Idaho Code. The taxpayer stated he intended to voluntarily continue to comply with all lawful contractual obligations regarding all income taxes. He stated that he has never been supplied with any documentary evidence stating that he was defined or qualified as a "Taxpayer" who is explicitly required to file federal income tax returns. Until he receives such evidence, the taxpayer stated he is under the assumption that there is no expressed obligation or liability for him to file a federal income tax return. The taxpayer made an "Offer to Pay" all lawful income and excise tax obligations upon receipt of certified proof from the Idaho State Tax Commission that he is a "taxpayer" and that he is liable for Idaho income taxes. He stated it is not now nor has it ever been his intention to avoid paying any obligation which he is shown to lawfully owe.

The Bureau recognized the statements and claims made by the taxpayer as those akin to various tax-protestor movements, so the Bureau referred the matter for administrative review. The Tax Commission sent the taxpayer a letter giving him two options for having the Notice of Deficiency Determination redetermined. The taxpayer contacted the Tax Commission to inform it of his situation. He stated he was in the process of relocating to [Redacted] and would have the CPA he hired in [Redacted] go through his records. The taxpayer's CPA contacted the Tax Commission and stated that she had been in contact with the taxpayer and that he should have his records to her in four to six weeks. She anticipated completing returns for the taxpayer by the first of July 2004; however, no returns were provided. The taxpayer contacted the Tax Commission again giving the impression that he was going to have returns prepared. However, after a year and no receipt of any returns, the Tax Commission gave the taxpayer a final date to provide the returns to the Tax Commission. The taxpayer's response to the Tax Commission's deadline was to revert back to his tax-protestor type arguments claiming that he had not been

given his common law right to a trial by jury as declared by the Seventh Amendment to the Constitution. The taxpayer also provided the Tax Commission with a tentative draft of PETITIONER'S MOTION TO DISMISS for lack of personam jurisdiction. This was apparently intended to show the taxpayer's intention if the Tax Commission did not cease and desist in its collection efforts.

The taxpayer's argument begins with his statement that he has not been provided with any documentary evidence that he is a "taxpayer" who is explicitly required to file federal income tax returns. He stated without that evidence, he has no obligation or liability to file a federal income tax return.

Internal Revenue Code (IRC) section 6012(a)(1) states that every individual having gross income in excess of the exemption amount is required to file a federal return. The court in In Re: Peter Kay Stern, 114 F.3d 1177 (4th Cir. 1997) stated,

. . . the duty to file returns and pay income taxes is clear. Section 1 of the Internal Revenue Code imposes a federal tax on the taxable income of every individual. Section 63 defines "taxable income" as gross income minus allowable deductions. Section 61 states that "gross income means all income from whatever source derived," including compensation for services. Sections 6001 and 6011 provide that a person must keep records and file a tax return for any tax for which he is liable. Finally, § 6012 provides that every individual having gross income that equals or exceeds the exemption amount in a taxable year shall file an income tax return. The duty to pay federal income taxes therefore is "manifest on the face of the statutes, without any resort to IRS rules, forms or regulations."

Idaho Code section 63-3030 references IRC section 6012(a)(1) for setting the thresholds for filing Idaho income tax returns. The Idaho legislature stated its intent in Idaho Code section 63-3002 to impose a tax on the residents of Idaho. Idaho Code section 63-3024 imposes a tax on every individual that is required to file a return. Idaho Code section 63-3008 defines an individual as a

natural person. Idaho Code section 63-3009 defines "taxpayer" as any person subject to a tax imposed by the Idaho Income Tax Act or required by the provisions of the Idaho Income Tax Act to file an income tax return, report income, or pay a tax.

The taxpayer is an individual, and he was a resident of the state of Idaho. Therefore, if the taxpayer had income in excess of the threshold amounts provided in Idaho Code section 63-3030, he was required to file an Idaho income tax return. The Bureau received information that the taxpayer received nonemployee compensation for the tax year 1999 in the amount of \$239,947. In 2000, the taxpayer received nonemployee compensation in the amount of \$178,080. These amounts are well over the filing thresholds of Idaho Code section 63-3030. Therefore, as a resident of Idaho, the taxpayer is subject to tax by the state of Idaho and is considered a taxpayer.

The taxpayer stated he would gladly honor the Tax Commission's presentment if it was shown that there was a taxing statute and/or an underlying foundational contract, enforceable under law, which can verify that he has some provable explicit liability authorized by his signature to which he can be held accountable. This language suggests the state of Idaho must conform to the Uniform Commercial Code (UCC) in its dealings with taxpayers. However, Idaho Code section 28-1-102 sets out the purpose of the UCC. It states in pertinent part:

Purposes - Rules of construction - Variation by Agreement.- (1)

This act shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this act are

(a) to simplify, clarify and modernize the law governing commercial transactions;

(b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties;

(c) to make uniform the law among the various jurisdictions.

(Emphasis added.)

The Uniform Commercial Code applies only to commercial transactions; it has no bearing on a determination of tax matters. Therefore, the Tax Commission finds the UCC argument inapplicable to the matter at hand.

The taxpayer hinted in his protest letter and stated more succinctly in his tentative draft of his motion to dismiss his contention that Idaho does not have jurisdiction over him. The jurisdiction or authority Idaho has over the taxpayer is granted by virtue of the taxpayer living and residing within the borders of the state of Idaho. The U.S. Supreme Court stated in New York, ex rel Cohn v. Graves, 300 U.S. 308, 312-313 (1937),

That the receipt of income by a resident of the territory of a taxing sovereignty is a taxable event is universally recognized. Domicile itself affords a basis for such taxation. Enjoyment of the privileges of residence in the state and the attendant right to invoke the protections of its laws are inseparable from the responsibility of the costs of government.

In Shaffer v. Carter, 252 U.S. 37, 52 (1920) the court stated,

And we deem it clear, upon principle as well as authority, that just as a State may impose general income taxes upon its own citizens and residents whose persons are subject to its control, it may, as a necessary consequence, levy a duty of like character, and not more onerous in its effect, upon incomes accruing to non-residents from their property or business within the State, or their occupations carried on therein; enforcing payment, so far as it can, by the exercise of a just control over persons and property within its borders.

Idaho's jurisdiction to tax is founded in whether an individual resides within the boundaries of the state or if an individual has income from Idaho sources. This is reflected in the Idaho legislature's stated purpose of the Idaho Income Tax Act in Idaho Code section 63-3002,

[t]o impose a tax on residents of this state measured by Idaho taxable income wherever derived and on the Idaho taxable income of nonresidents which is the result of activity within or derived from sources within this state . . .

The tax on individuals is further stated in Idaho Code section 63-3024,

For each taxable year, a tax measured by Idaho taxable income as defined in this chapter is hereby imposed upon every individual, trust, or estate required to file a return.

The Idaho legislature has clearly set forth that the Idaho income tax applies to residents of this state. A resident is defined in Idaho Code section 63-3013 as any individual who has resided in the state of Idaho for the entire taxable year or who is domiciled in this state. The taxpayer stated he lived in [Redacted], and the Bureau found that he claimed the homeowner's exemption on a house in [Redacted] from 1993 through 2002. The taxpayer did state that he changed his location from [Redacted] to [Redacted] [Redacted] in November 2000 but provided nothing further to establish he changed his domicile to [Redacted]. Therefore, since the taxpayer resided within the borders of the state of Idaho and his domicile likely remained in Idaho, the taxpayer did come under the jurisdiction of the state of Idaho and had a requirement to report all income to Idaho.

The arguments presented by the taxpayer did not persuade the Tax Commission that the taxpayer did not have an obligation to file an Idaho income tax return. Furthermore, the taxpayer has provided no documentation or information that would show that the returns prepared by the Bureau were incorrect. It is well settled in Idaho that a Notice of Deficiency Determination issued by the Idaho State Tax Commission is presumed to be correct. Albertson's Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814 (1984); Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986). The burden is on the taxpayer to show that the tax deficiency is erroneous. Id. Since the taxpayer has failed to meet this burden, the Tax Commission finds that the amount shown due on the Notice of Deficiency Determination is true and correct.

The Bureau also added interest and penalty to the taxpayer's tax deficiency. The Tax Commission finds those additions appropriate as provided for in Idaho Code sections 63-3045 and 63-3046.

WHEREFORE, the Notice of Deficiency Determination dated October 8, 2003, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1999	\$18,522	\$4,631	\$7,164	\$30,317
2000	13,729	3,432	4,212	21,373
2001	15,377	3,844	3,532	<u>22,753</u>
			TOTAL DUE	<u>\$74,443</u>

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is included with this decision.

DATED this ____ day of _____, 2006.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2006, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

Receipt No.

[Redacted]

[Redacted]
